and Auditor General of India thereon.

(ii) Statement by Government accepting the above Report.

II. Statement (in English and Hindi) giving reasons for the delay in laying the papers mentioned at (I) above.

[Placed in Library. *See* No. LT-163/96]

MESSAGES FROM THE LOK SABHA

(I) The Appropriation (Vote on Account) No. 2 Bill, 1996

(II) The Appropriation (No. 2) Bill, 1996.

SECRETARY-GENERAL: Madam, I have to report to the House the following messages received from the Lok Sabha, signed by the Secretary-General of the Lok Sabha:—

(I)

"In accordance with the provisions of the rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose the Appropriation (Vote on Account) No. 2 Bill, 1996, as passed by Lok Sabha at its sitting held on the 26th July, 1996.

The Speaker has certified that this Bill is a Money Bill within the meaning of article 110 of the Constitution of India."

(II)

"In accordance with the provisions of the rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose the Appropriation (No. 2) Bill, 1996, as passed by Lok Sabha at its sitting held on the 26th July, 1996.

The Speaker has certified that this Bill is a Money Bill within the meaning of article 110 of the Constitution of India."

Madam, I lay a copy of each of the Bills on the Table.

THE DEPUTY CHAIRMAN: We will now take up the Conservation of the Foreign Exchange and Prevention of Smuggling Activities (Amendment) Bill, 1996.

THE CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES (AMENDMENT) BILL, 1996

THE MINISTER OF FINANCE (SHRI P. CHIDAMBARAM): Madam, I beg to move that the Bill further to amend the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, as passed by Lok Sabha, be taken into consideration by this House.

The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA in short) was enacted to provide for preventive detention in certain cases for the purposes of:—

(a) Conservation and augmentation of foreign exchange; and

(b) Prevention of smuggling activities and for matters connected therewith.

In recent years, India has been facing a serious problem on smuggling activities at international airports and sea ports. The menace of smuggling has not abetted in any way despite the import of 5 kilograms of gold and 100 kilograms of sliver per passenger allowed by Government on payment of nominal custom duty in convertible foreign exchange. Even though a number of measures under the Customs Act, 1962 have been taken in the past namely, adjudication and prosecution proceedings, and the provisions for preventive detention under the COFEPOSA Act, 1974, smuggling continues to be a serious problem to our economy.

The COFEPOSA Act provides for two types of cases in which person engaged in smuggling activities can be detained. The first relates to order of detention issued under section 3(1) of the Act wherein the maximum period of detention is one year. After a person is detained the case is referred within 35 days to the Advisory Board consisting of three High Court judges for their opinion. If the Advisory Board recommends that the detention is not justified, the detenu is released forthwith. In other cases the detention orders are confirmed within 90 days.

The second type of cases related to cases of persons engaged in smuggling activities in areas categorised as "highly vulnerable areas" under section 9 of the Act. These areas include West Coast, Sourth Eastern Coast, Indo-Pakistan Border and Delhi airport. A residual clause provided the extension of these definitions to other areas. In terms of this provision the Calcutta airport was defined as "highly vulnerable area" in December, 1985. Subsequently, Indian customs waters contiguous to the State of Andhra Pradesh and Orissa, Yanam in the Union Territory of Pondicherry and the inland area 50 kilometres in width from the coast of India falling within the territories of States of Andhra Pradesh and Orissa and Yanam were also declared as "highly vulnerable areas" in Decemnber, 1991. If the Competent Authority issues a declaration under section 9(1) of the Act to the effect that a person is likely to engage in smuggling activities in a "highly vulnerable area" the maximum period of detention is increased from one year to two years as per section 10 of the Act. In such cases, the opinion of the Advisory Board is required to be obtained within six months of detention instead of usual period of three months.

As for the cases of perons detained for violation of FERA provisions, the maximum period of detention is one year. In such cases, provisions of section 9 will not be applicable.

Past experience shows that the provisions of section 9 of the Act has been a strong deterrent to smuggling.

It is, therefore, considered necessary to continue the provisions of section 9 of the Act in respect of detention orders which may be issued even after 31st July, 1996 for a further period of three years.

The quesiton was proposed.

THE DEPUTY CHAIRMAN: Shri Charan Singh.

श्री शिवचरण सिंह (राजस्थान): उपसभापति महोदया, इस बिल के अमेंडमेंट के जो ओब्जेक्ट्स पर माननीय मंत्री जी ने प्रकाश डाला है, अगर यह सत्य है तो मैं उन पर दया करते हुए इस बिल का समर्थन करता हूं। (व्यवधान)

श्रीमती रेणुका चौधरी: अगर सत्य बात है तो (व्यवधान)

श्री शिवचरण सिंह: क्योंकि जो ओब्जेक्ट बताए हैं, बड़े अच्छे हैं लेकिन उनकी पूर्ति मंत्री जी कितनी कर पाएंगे? माननीय मंत्री जी मेरा स्वयं के जीवन का अनुभव है। मैं 16 जनवरी, 1950 को पाकिस्तान बार्डर पर घघरा रोड पर नौकरी में नियुक्त हुआ। पाकिस्तान का बार्डर 800 किलोमीटर लम्बा है और स्मलिंग एक्टीविटीज़ में जो आपने वल्नेरेबल प्वाइंट दिये हैं उनमें इंडो पाक बार्डर और दिल्ली तथा दो सीज़ का ज़िक्र किया है। इसके इलावा आप देखेंगे कि पिछले 40 साल में आज़ादी के बाद स्मगलिंग की एक्टीविटीज़, फारेन एक्सचेंज की स्मगलिंग करने के, लाने ले जाने की तरीकों में भारी बदलाव आया है। आपने एक्ट में एक बार अमेंडमेंट किया, कई बार एक्सटेंशन किया, यह भी एक एक्सटेंशन है, इस एक्सटेंशन के करने की जहां तक गुंजाइश है, जो आपने ओब्जेक्ट बताए हैं, मैं उनको दोहराना नहीं चाहता हूं क्योंकि मैंने पहले ही सहानुभूति दिखाते हुए बिल को पास करने की इच्छा ज़ाहिर कर दी है। इसलिए माननीय मंत्री जी आप देखेंगे कि पुराने ज़माने में जो स्मगलिंग होती थी जैसे आपने सोने की बात कही, हेरोइन सोना आया करता था। लेकिन आज स्मगलिंग का तरीका बदला है। आज आर०डी०एक्स० और हथियार आते हैं। आर०डी०एक्स० और हथियारों के मामले में आपने देखा होगा पिछले तीन साल में जितने मामले दर्ज हुए हैं उनमें क्या हुआ इतने अमेंडमेंट करने के पश्चात् भी, इतनी सख्ती करने के पश्चात् भी। अच्छा होता दूसरा कोई संशोधन लाते जिससे इस पर रोक

लगाते। आपने स्वयं यह माना है कि इस कानून के लाने के पश्चात् भी, अमेंडमेंट और एक्सटेंशन करने के पश्चात् भी आप स्मगलिंग रोकने में असमर्थ रहे हैं, फारेन एक्सचेंज को कंज़र्व करने में असमर्थ रहे हैं और फारेन एक्सचेंज का आदान-प्रदान स्मगलिंग के माध्यम से बढ़ता चला जा रहा है। आज लिब्रलाइज़ेशन के बाद आप देखेंगे कि व्यापारियों को जो आपने सुविधाएं दी हैं, उन सुविधाओं का उन्होंने दुरूपयोग किया है। जो छूटें आपने दी हैं, उनका दुरूपयोग किया है। मैं आपको यकीन दिलाना चाहता हूं मैं पिछली बार जयपुर में था। वहां हमारे एक मित्र कनाडा से मिलने के लिए आए हुए थे। उस महानुभाव ने उस को कहा कि आप कनाडा जा रहे है तो मैं आपको एक्सपोर्ट का एक आर्डर देता हूं। आप ऐसा करिये यहां से भुजिया ले जाइये। भुजिया का कनसाइनमेंट आप ले जा कर चाहे वहां जा कर कुत्तों को खिला देना या फैंक देना। मैंने कहा कि यह क्या बीमारी है। उसने बताया कि यहां से सामान ले जाने में हमको फोरेन करेंसी एक्ट में जो छूट है, वह हम किसी प्रकार से प्राप्त कर लेंगे। मैं इसको पूरी तरह समझ नहीं पाया क्योंकि यह मेरा धंधा नहीं है। लेकिन मेरा दिमाग ठनका कि लोगों ने कैसे कैसे तरीके निकाले हैं। चिदम्बरम् जी कर्नाटक से आते हैं, इनको अधिक जानकारी होगी.... **(व्यवधान)**

उपसभापतिः तमिलनाडु के है, कर्नाटक के नहीं है। **(व्यवधान)**

श्री शिवचरण सिंहः तमिनाडु के हैं तो और भी आसान है क्योंकि तमिलनाडु से बोट से भी चले जाते हैं, श्रीलंका चले जाओं, कहीं भी चले जाओं, यह तो और भी आसान है। माननीय मंत्री जी आप देखेंगे कि इस बिल का नाम है विदेशी मुद्रा संरक्षण और तस्करी निवारण (संशोधन) विधेयक। अगर यह दोनों काम आप पूरे कर लें फारेन एक्सचेंज का संरक्षण भी कर लें और स्मगलिंग को भी रोक लें तब तो ठीक है अदरवाइज इस कानून को बदलने की चेष्टा आपको करनी चाहिये। आपने बताया कि तीन साल के लिए एक्सटेंड करना चाहते हैं आप यह अमेंडमेंट 96 तक का लीजिये, उसके बाद अगर आप संतुष्ट हो जाएं तो इसको स्क्रैप कर देना अन्यथा मेरी आपसे करबद प्रार्थना है कि कोई सख्त कानून लाएं जिससे दोनों चीजें रुकें मैं आपको बताना चाहूंगा आपने बताया 1990-91 में पूरा कानून होता था। लेकिन माननीय मंत्री जी यह आपको मालूम है। अभी आपकें दिल्ली एयरपोर्ट पर जो सोना पकड़ा गया वह किन लोगों से पकड़ा गया। वह कोई स्मगलर्स से नहीं पकड़ा गया था। वह पकड़ा गया था खाना सप्लाई करने वाले लोगों से ट्राली में। अभी कोई महीना भर पहले की बात है। मैं कहना चाहता हूं कि आज कोई स्मगलर स्मगलिंग नहीं कर रहा है। स्मगलिंग में इन्वाल्ड हो गए है आपके एयर इंडिया के लोग या दूसरी एयर सर्विसेज के लोग या केटरियंग के लोग। इन चीजों पर अगर आपने सख्ती की तब तो कुछ होगा, नहीं तो कुछ नहीं होगा। आप इसका अंदाजा कीजिए। हम लोग कमेटी में पिछली बार तूतीकोरन गए। वहां एक शिप को देखा हमने। वह शिप पकड़ा हुआ था। शिप के लिए था कि इसको नीलाम करें। आप देखिए कि शिप जो नीलामी के लिए था वह उनका था जो आज के जमाने के स्मगलर्स हैं। कोस्टल एरिया में हमारे जो कोस्टल गार्ड्स हैं उनके पास जो जहाज या एयरक्राफ्ट्स हैं वे आउट डेटेड है। उनकी क्षमती उतनी नहीं है जितनी स्मगलर्स की है। 3-4 साल पहले हम अंडमान निकोबार गए थे अंडमान निकोबार जेल में वहां कौन थे? कुछ स्मगलर्स थे। जो स्मगलर्स थे वे वहां पास के मुल्कों के स्मगलर्स थे। आप अंदाज कीजिए उनकी तरकीब क्या थी। हम लोगों ने उनसे पूछने की कोशिश की। हम लोग उनकी लैंग्वेज नहीं समझते थे, भाषा नहीं समझते थे लेकिन इन्डाइरेक्ट पूछने की कोशिश की तो पता यह लगा कि ये लोग तो सब भाड़े के टट्टू हैं। वे जहाज किसी और के हैं चाहे वे मछली की स्मगलिंग करने के लिए आए या दूसरी चीजों की स्मगलिंग करने के लिए आए। आपके कानून में खामी है कि जो पकड़े जाते हैं उन पर तो कानून लागू होता है लेकिन वैसे जो कानूनन तरीके से वेसल्स के मालिक हैं जो उन आदमियों को इन्गेज करके वहां से भेजते हैं, उन पर कोई कार्यवाही नहीं होती। तो यह जो कानून में लैकूना आ गया है इन सारे लैकूनाज को आपको दूर करना चाहिए। मान्यवर, अगर आपके कानून में सख्ती होती तो आप देखिए कि आर०डी०एक्स० का जो मामला है, जो हथियार पुरुलिया में गिराए गए, वह होता। क्या फारेन एक्सचेंज के बगैर वे हथियार आ गए? विदेशी मुद्रा के बगैर हथियार नहीं आए होंगे। सारे पुरुलिया में हथियारों की वर्षा करा दी गयी और आपने देखा कि फेरा का उल्लंघन हुआ। लेकिन आपने क्या कर लिया। पुरुलिया में ही नहीं आपके पड़ोस में कर्नाटक में भटकल में हथियार गिरे, हथियार आए। भकटल एक स्थान है। मुझे एक्चुअली उसका पता नहीं है। मैंने अखबार में पढ़ा। लेकिन भटकल कोई स्थान कर्नाटक में है। वहां पर हथियार आ रहे हैं और उन हथियारों के बल पर एम०पीज० को मारने पीटने के लिए डराया जा रहा है। यह उत्तर भारत में तो

कुछ चलता था—पंजाब में, काश्मीर में, पूरब में भी कहीं चला जाता था कुछ हल्ला-गुल्ला और ईस्टर्न स्टेट्स में भी लेकिन अब तो कर्नाटक और तमिलनाडु में चल रहा है। तमिलनाडु में मान लो छोड़ दें लिट्टे की एक्विटीज को, उनसे कुछ मिलता मिलाता होगा लेकिन कर्नाटक तो बड़ी पीसफुल जगह थी कर्नाटक में भटकल में हथियार गिराए गए। हथियार आए। जो आदमी इसमें थे क्यों नहीं पकड़े गए? इसी तरह से आप यूरिया घोटाले में अंदाज कीजिए। क्या यूरिया घोटाले में नहीं हुआ? यूरिया घोटाले में जो रुपया था वह कहां से आया? डाइरेक्ट्रेट आफ इन्फोर्समेंट ने क्या कहा है? डाइरेक्ट्रेट आफ इन्फोर्समेंट ने डाइरेक्ट कहा है कि यह फेरा का उल्लंघन है। क्या कार्यवाही की है आपने? इसी तरह से आपके प्रकाश? यादव साहब का जो रुपया था यूरिया घोटाले वाला, उस रुपए का क्या हुआ? क्या यह रुपया विदेश में नहीं गया? आप भंडारी और धर्मेश? यादव के बारे में बोलते हैं। उनके आने के बाद, उनके माध्यम से जो रुपया आया वह कहां गया? क्या यह उल्लंघन नहीं हुआ? बैंकिंग स्कैम—हर्षद मेहता के रुपए का क्या हुआ? आपके इन्वेस्टेमेंट और पब्लिक सेक्टर अंडरटेकिंग्स के शेयर्स का जो रुपया था उसका क्या हुआ? बोफोर्स कांड में जो इतना लम्बा चल रहा है, आप लोगों ने बोफोर्स के बारे में बहुत कहा। उस तरफ बैठे हुए हैं। आपने बहुत कथाएं बांची। इनको याद होगा। इनको अपने दिल को टटोलना चाहिए कि बोफोर्स के बारे में आपने क्या क्या कहा। जो वह बोफोर्स का रुपया था क्या उसका उल्लंघन नहीं हुआ? उसका क्या हुआ—जैन हवाला कांड जो लेटेस्ट है। अंदाज करिए। आप में से कुछ लोग हमारी कांग्रेसे के और दूसरे सदन के दोस्त, वे जैन हवाला कांड की कई बातों में इंटरेस्टेड है। बहुत लम्बे-चौड़े लोग हैं। हम तो पर्दाफाश करने में है। पर्दाफाश करना है— अगर आपको करने की हिम्मत हो तो। आपको मदद करेंगे। तो महोदया, इन सब कामों में आपको कुछ कार्यवाही करनी चाहिए। आशा यह थी क्योंकि आप अच्छे वकील हैं और फाइनेंस मिनिस्टर है। इन सब में अगर आपने कुछ करके दिखाया तब तो इस कानून में अमेंडमेंट और एक्सटेंशन्स जो चाहे आप ले लीजिए। लेकिन आपने कुछ नहीं किया तो हम जानेंगे कि लीपापोती करके पिछले लोगों की पंक्ति में आप भी आना चाहते हो। मान्यवर, आप हिम्मत करिए। आपमें हिम्मत है। कांग्रेस को छोड़कर, जांघ ठोककर अगर आप खड़े हो गए है तो ऐसे ही इन बुराइयों से लड़ने के लिए भी आप तैयार हो जाओ। आप हिम्मत वाले है इसलिए कह रहा हूं। एक जवां मर्द है। वकील है आप। जवान है। कुछ सुधार कीजिए इस देश में। 40-45 साल के बाद इस हिन्दुस्तान में एक जवां मर्द आदमी को देख रहा हूं। मुझे आशा दाढ़ीवाले बाबा से भी थी लेकिन कुछ नहीं हुआ। बाबा चले गए तो नाती तो कुछ करे। ओरिजिनल एक्ट आप देखिए। 1974 में यह आया। 22 साल के पीरियड में आपने कई बार एक्सटेन्शन्स लिए, अमेंडमेंट ले लिया और उसके बाद आप यह कह रहे है कि स्मगलिंग बढ़ रही है।

SHRI P. CHIDAMBARAM: Madam, he has used one Hindi word which should be looked into. *(Interruptions)*. He has said something about a bearded fellow. *(Interruptions)*. THE DEPUTY CHAIRMAN. I can follow.

श्री शिवचरण सिंह: मैं ने कुछ नहीं कहा। मैं तो आप से प्रार्थना की है कि आप कुछ करिए, देश-हित में करिए। देश-हित में जब तक गैर-कानूनी एक्टिविटीज के खिलाफ....

(व्यवधान)....

THE LEADER OF THE OPPOSITION (SHRI SIKANDER BAKHT): It is not vulgar at all.

THE DEPUTY CHAIRMAN: They are not objecting to it. *Interruptions)*.

श्री शिवचरण सिंह: "बाबा" तो रिस्पैक्टफुल वर्ड है। बाबा कितना रिस्पैक्टफुल है? बाबा अन-पार्लियामेंटरी वर्ड कैसे हो गया? मैंने पूर्व फायनेंस मिनिस्टर को बाबा कहा है। दाढ़ी वाले को बाबा कहते हैं और मूंछ वाले को काका कहते हैं। यह सामाजिक व्यवस्था है। दाढ़ी वाले को बाबा और मूंछ वाले को काका, यह तो सामाजिक व्यवस्था है। इस में कौनसी बुराई की बात हो गयी? क्या मैंने अपशब्द कह दिया... **(व्यवधान)**...

उपसभापति: दाढ़ी वाले को आप बाबा कह रहे हैं, मूंछ वाले को कुछ कह रहे हैं, आप को क्या कहेंगे? यह सब बातें कहने की क्या जरूरत है? दाढ़ी-मूंछ और बिना दाढ़ी-मूंछ का जिक्र क्यों कर रहे है? आप अपनी बात कहिए। आप जरा ध्यान दीजिए। आप ने जो वर्ड कहा है, उस वर्ड को विद्ड्रा कर लीजिए।

श्री शिवचरण सिंह: महोदया, मैंने जो शब्द कहा है, अगर किसी को बुरा लगता है तो मैं वापिस लेता हूं। माननीय महोदया, मैं माननीय मंत्रीजी से कहना चाहता हूं कि आप ने कुछ वलनरेबल पाइंट्स बताए हैं, लेकिन मैं आप से पूछना चाहता हूं कि 7 सिस्टर स्टेट्स और बर्मा का जो बॉर्डर है, वहां के हालात आज क्या है? मेघालय

के बार्डर के क्या हालात है? मेघालय का बॉर्डर मैं ने पर्सनली देखा है। वहां के क्या हालात है? वहां स्मगलिंग की क्या दशा है? वहां से आर्म्स आ रहे हैं; वहां से फॉरेन करेंसी आती और जाती है। चाइना बॉर्डर पर सिलीगुड़ी और जलपाइगुड़ी के आसपास खुले बाजार में क्या हो रहा है? आप ने देखा होगा। नेपाल के बॉर्डर से क्या हो रहा है? पुराने जमाने में स्मगलिंग होती थी पाकिस्तान से और दूसरे एरियाज से, आज गुजरात बॉर्डर पर जहां अरब सागर है, सारे गुजरात बॉर्डर पर जो "सी शोर" है, "शैली सी शोर" है जहां वेसल्स नहीं आते थे वहां आज स्मगलर्स इक्ट्ठे हो गए हैं। सारे हथियार वहां से आ रहे हैं। उस बारे में आप कार्यवाही करवाएंगे? कोस्टल बॉर्डर को आप स्ट्रेंथन करेंगे? क्या उन के वैसेल्स को आधुनिक कराएंगे? वहां पेट्रोलिंग के लिए स्पीड वाले जहाज चलाएंगे? इन सारी चीजों के लिए अगर आप व्यवस्था करें तो मैं आप के इस अमेंडमेंट का स्वागत करता हूं और आप के प्रस्ताव का समर्थन करते हुए अपनी बात

समाप्त करता हूं। मंत्री जी, मैंने जो कुछ निवेदन किया उसके बारे में अमल करने की चेष्टा करें धन्यवाद।

SHRI JOHN. F. FERNANDES (Goa): Madam, it is a very innocuous Bill. We are only seeking to extend the life of the COFEPOSA from tomorrow to next three years. With partial convertibility I don't think this Bill will have any relevance in future. The Minister has mentioned in his statement that you can import gold and silver freely and that there is no premium on these items in this country. But the important thing in this Bill is RDX. We have seen what havoc and terror it has created in the country. Even Customs officers were involved in smuggling. I think the Minister should come with a proper legisaltion to deal with TADA and NSA. I think this Bill should come under the Home Ministry rather than being under his Ministry.

The hon. Minister has rightly mentioned that it should be extended for three years. Okey, we support it. But after some time this will become redundant. I think a clause 'or earlier, whichever is less' should have been introduced here.

Now the Minister is for full convertibility. I don't think this Act should remain on the Statute Book because very often this Act is being misused by officials. There is a case in my State. Here the Minister has said, "The opinion of the Advisory Board is to be obtained within six months of detention instead of usual period of three months." During the first three months any aggrieved person can go to a court with a writ of *habeas corpus* and get himself released. It will make a mockery of the Advisory Board.

The opinion of the advisory body should be obtained from day one to three months rather than give scope for courts to have any plea in this Act and get the accused or the person who is detained for preventive detention released. Madam, this Act came into this country just prior to the Emergency in 1974. It came as MISA. Then it was bifurcated into COFEPOSA, then TADA and then NSA.

SHRI PRANAB MUKHERJEE (West Bengal): It was brought in the form of an ordinance in September 1974 and later on it was converted into an Act.

SHRI JOHN F. FERNANDES: I know, the hon. Member was the Minister of State for Finance at that time; I remember. What I am saying is that during the Emergency they had converted it into COFEPOSA and TADA and NSA.

Madam, the purpose is fulfilled I think, with the full convertibility of this currency shortly. I think the purpose will be fulfilled and the hon. Minister should come with a comprehensive legislation giving these powers to the Home Ministry. Madam, here I don't know how the Minister can detain the conspirators outside the country. You know what happped during the Bombay bombing. The conspiracy was headed by the ISI. How can we arrest them? So unless we have a law in consonance with the international laws where Interpol comes into play it makes a mockery of this law. It is executed by some Johnnies in the street but the conspiracy is hatched somewhere else. I do not think this law will have any teeth as

far as RDX and smuggling of arms are concerned, in this country. Madam, you have seen what happened to the Purrulia arms dropping. I do not think any of the accused are caught under COFEPOSA. Therefore I feel this law should be transferred to the Home Ministry. Madam, the people who are detained are very powerful financially, I am told there is a judge, or a sitting judge or an ex-judge; there are senior advocates and we know the antecedents of advocates ; I am one of them. So the Government should have a fool-proof background of these people. I know in my State a Member of the Advisory Committee just got Rs. 40,000 and the smuggler was out. So, unless we see the antecedents of the Members of the Advisory Board, we will be making a laughing stock of this statutory provision in our Statute. Madam, I do not have much to speak but my main suggestion is that this law should be transformed into some other form of Act where it should deal only with terrorists, RDX and import of AK-47, AK-56 and I think this law will be shortly redundant. With these few submissions, Madam, I hope the hon. Minister will reply to my queries and I fully support this Bill.

SHRI PREM CHAND GUPTA (Bihar): Madam Chairperson, the COFEPOSA Act 1974 was brought onto the Statute Book during 1974-75 as stringent, deterrent provision for curbing those types of offences which, if allowed to go unabated and unchecked, would play havoc with the economy of the country. As the very nomenclature of the Act speaks, this Act provides for detention of smugglers and foreign exchange racketeers with the main objective of preventing them from acting in any manner which is prejudicial to the economic health of the country. Madam, in this case, I have only two suggestions to make. I would really appreciate it if the hon. Finance Minister would look into this. One is, there is a provision in the Act that if a case is caught in certain vulnerable areas, the detention period is two years whereas a similar offence committed somewhere else, calls for a detention of one year. So I suggest that the hon. Finance Minister should look into this. The other provision in the Act is, that detention made under smuggling offences is for a period of two years whereas if the detention is made under Foreign Exchange Regulation Act, the detention period is only one year.

Whereas, Madam, you would appreciate that violation of foreign exchange is a serious offence as far as the economic offence is concerned. They both are complementary to each other. And I do not see any rationale behind this difference in the period of detention for these two types of cases. According to information available through newspapers and other sources, there has been an inflow to the extent of Rs. 1,00,000 crores per year through illegal remittance, whereas the detection is regarding only Rs. 450 to 500 crores. So, I would suggest and recommend that this detention period for these foreign exchange racketeers should also be increased to two years. Here, Madam, I would also like to point out that since this is a very strict and stringent Act, before it is used, all precautions should be taken to ensure that before a person is detained under this Bill his or her case is properly scrutinised and thoroughly looked into. The need of the day is to go ahead with this Act.

I fully support this, particularly section 9 which is under debate today for extension for three years. It is a good move and is the necessity of the day. We all support it. Thank you.

THE DEPUTY CHAIRMAN: Dr. Biplab Dasgupta.

DR. BIPLAB DASGUPTA (West Bengal): Madam, I have no difficulty in supporting the Bill. But the question is, then what? In India, generally speaking, we are always long on legislation and rhetoric, but short on implementation. I do not know whether the change of

regime and the fact that we now have a different Government, would bring about a change in terms of political will. In the past also, whenever it came to handling of economic crimes, there has been an appalling lack of political will on the part of the Government. During the debate on the Bill, some of our friends have mentioned about RDX, arms smuggling and all that. These are all very serious issues. But I think the main thrust here is not really on such kind of a crime. We are basically dealing with economic crimes. The other crimes are also important. Any kind of smuggling is bad. But, here, in the context of this particular Bill, we are mainly dealing with economic crime. When it comes to economic crimes, we find the record, as I said just now, is really very very poor. The reason is very simple. The reason is, the economic criminals are basically very rich people; people with a lot of money and a lot of influence. And this is true from the demand side and also from the supply side. On the demand side people who want electronic gadgets, fashionable things, luxury things, are all very rich people. On the other side, those who provide these things to the rich consumers are also very rich people. So, there is influence on both the sides, *i.e.*, demand and supply. And this cripples the initiative on the part of the Government because many of the parties in our country are so closely linked with these elements who are involved in the crime that they do not take any action against them. I can give you many examples. Here, I would like to mention one or two of them. Take the Chandraswamy case. There are allegations of 8 or 9 FERA violations against him. Nothing was done for 13 or 14 years. Why was something not done? Or take, for example, the very recent one, the Dawood Ibrahim case, this man who runs the 'hawala' racket. He is one of the people responsible for arranging the smuggling of gold from Dubai to the shores of the country. Now, this Dawood Ibrahim's men come to Delhi and other parts of the country and get shelter from the important leaders of two major political parties in this country. Is itn't a fact? Is it also not a fact that one of our former Ministers who brought goods worth a few lakhs of rupees and he tried to smuggle them through customs? ...(*Interruptions*)...It is smuggling, isn't it? One sincere officer...(*Interruptions*)...I would like to say this is smuggling.

SHRI JOHN F. FERNANDES (Goa): It is not smuggling. It is evasion of duties...(*Interruptions*)...

DR. BIPLAB DASGUPTA: I would say it is smuggling. If you don't pay the right duties, it is smuggling. This former Minister — he was then a Minister — took them through the customs, did not declare his goods, wanted to smuggle them but could not because of the conscientious ...(*Interruptions*)...

THE DEPUTY CHAIRMAN: There is a difference. Anything which is not a banned item can be brought. If somebody brings it beyond certain free limits, then he has to pay duty and get it. Smuggling is to bring banned items like guns, bombs and other contraband, RDX etc. So let us differentiate. You were mentioning about one of your colleagues. Nothing has been proved that he was a smuggler. I would like you not to mention this, in this form.

DR. BIPLAB DASGUPTA: Madam, What I would say is this. If you allow me to disagree with you...(*Interruptions*)...

THE DEPUTY CHAIRMAN: No. If you agree or disagree, then I will have to use my discretion. I am trying that I don't have to use my discretion to tell you not to use these two examples; otherwise, you have the freedom to withdraw this yourself. ....(*Interruptions*)...

SHRI GURUDAS DAS GUPTA One has to be discreet, Madam. ...(*Interruptions*). ...

SHRI SURINDER KUMAR SINGLA (Punjab): There is a court order. How can he say this? ...(*Interruptions*)...

DR. BIPLAB DASGUPTA : They are taking a legalistic view... *(Interruptions)*...

SHRIMATI JAYANTHI NATARAJAN (Tamil Nadu) : Madam, it is better he avoids it. ... *(Interruptions)*. ...

THE DEPUTY CHAIRMAN : That is what I was trying to give him, the difference between smuggling and violation of certain rules of importing certain goods. So you should try to differentiate between RDX and a few other items. This is thing I want to differentiate.

DR. BIPLAB DASGUPTA : If you don't permit me to mention this, I will not. That is a different question, Madam.

THE DEPUTY CHAIRMAN : I think we should keep certain norms. ... *(Interruptions)*...

SHRI SATISH AGARWAL (Rajasthan) : You have taken from this side to that side. Is is also smuggling?... *(Interruptions)*...

DR. BIPLAB DASGUPTA : I don't Nobody has smuggled me. There is no smuggling. ...*(Interruptions)*. ....

THE DEPUTY CHAIRMAN : You are not permitted certain time, but you speak. That is also smuggling of time, violation of certain rules.

DR. BIPLAB DASGUPTA : That is what he is doing smuggling my time. But, in any case, Madam my own feeling is, I will give you one other example, take the Bofors case...*(Interruptions)*... Why not? ... *(Interruptions)*. ....

DR. BIPLAB DASGUPTA : It is COFEPOSA, foreign exchange is involved. We are dealing with foreign exchange, conservation of foreign exchange. It is a question of foreign exchange which should have come to us legally, and which is no coming to us because of kickbacks and all that. It has not come to us. We are dealing with conservation of foreign exchange. On the question of implementation, in December 1994 if I remember correctly, the then Parliamentary Affairs Minister called the leaders of various political parties to report to us about what was happening with the Bofors case. We heard for him and also from the CBI Director and others. We were given a categorical assurance that within four or five months. ...*(Interruptions)*...

SHRI VAYALAR RAVI (Kerala) : I have a point of order. the point is I can quote the rules irrelevant repetition has to be avoided especially in a discussion of a Bill...*(Interruptions)*... Dr. Biplab Dasgupta is famous for making irrelevant utterances in the House. But as far as a Bill is concerned, irrelevant utterances amount to contempt and breach of privilege of the House. So irrelevant utterances of my friend should stop because it is not concerned with Bofors or the gun deal. This is a small Bill. I want a ruling.

SHRIMATI JAYANTHI NATARAJN : Madam, what he is saying is totally irrelevant to the subject. *(Interruptions)*...

SHRI VAYALAR RAVI : Mr. Jyoti Basu had gone abroad many times. His bag was never opened. Did we make any allegations? We did not make any allegations at all.

(Interruptions).

DR. BIPLAB DAS GUPTA : May I be allowed to speak, Madam?

(Interruptions)

What is this?

THE DEPUTY CHAIRMAN : Dr. Biplab Dasgupta, I want to bring to your notice that this is a serious discussion before us. At a late hour we are sitting here to discuss it. The difference between 'relevance' and 'irrelevance' is this. We are discussing this particular legislation. Whatever is related to it is relevant and whatever is not related to it is irrelevant. It is like if you say that your age is 85 or 25; that is irrelevant. Okay?

SHRI SIKANDER BAKHT : What is that?

THE DEPUTY CHAIRMAN : It is not unparliamentary. It is not wrong. It is not wrong to disclose your age on the floor of the House, but if you make it as a point in regard to this Bill, it will become irrelevant. I am only trying to point out to you the difference between the two words 'relevance' and 'irrelevance'.

DR. BIPLAB DASGUPTA : Madam, why are you saying that what I am saying is not relevant? I am talking about the conservation of foreign exchange.

SHRI JOHN F. FERNANDES : it is FERA.

DR. BIPLAB DASGUPTA : In the Bofors case, we have seen that the amount of foreign exchange due to our country has
been denied because of the kickbacks. How can I not make...(*Interruptions*)

THE DEPUTY CHAIRMAN: Mr. Biplab Dasgupta, any discussion which you had with any Minister — whoever that Minister might be — not on the floor of the House, but in his chamber, is not to be mentioned on the floor of the House because we do not know. It is not the property of the House. We do not know about it; what promise he made to you. (*Interruptions*)

सिकन्दर बख्त: सदर साहिबा, इस इर्रिलिवेन्स की बात को यादा स्ट्रेच करना ठीक नहीं है। इस ईश्यू से केनेक्टेड बहुत सी बातें हैं, मैं उनका जिक्र नहीं करूंगा लेकिन जिस बोफोर्स का ज़िक्र बिप्लव जी ने किया है उसमें फॉरेन ऐक्सचेंज इनवॉल्व था दो रूपों में। इसलिए इस इर्रिलिवेन्स के आरग्यूमेंट को बहुत ज्यादा न फैलाया जाए। मैं चाहूंगा कि ऐसा न किया जाए, इस इर्रिलिवेन्स को ज्यादा न खींचा जाए।...(व्यवधान)....

†[شری سکندر بخت: صدر صاحبہ - اس "اریلیونس" کی بات کو زیادہ "اسٹریچ" کرنا ٹھیک نہیں ہے۔ اس "ایشو" سے کنکٹڈ بہت سی باتیں ہیں میں انکا ذکر نہیں کرونگا

†[ ] Transliteration in Arabic Script.

لیکن جس "بوفورس" کا ذکر بپلب جی نے کیا ہے اسمیں فورن ایکسچینج انوالو تھا دو روپو میں - اسلئے اس "اریلیونس" کے "آرگومنٹ" کو بہت زیادہ نہ پھیلایا جائے - میں چاہونگا کہ ایسا نہ کیا جائے اس "اریلیونس" کو زیادہ نہ کھینچا جائے ..."مداخلت"...]

THE DEPUTY CHAIRMAN: Mr. Biplab Dasgupta, why are you wasting the time of the House? We have to go ahead with our Business.

DR. BIPLAB DASGUPTA: Madam, my point is this. The discussions about which I was mentioning was reported in the form of a Press Conference by the Minister. It came out in all the newspapers. The point is: a promise was made here. Then why are we not getting further information about this foreign exchange violation? At that time, I was told, the reason why we were not getting information was because, though the judges had given the verdict that information should be given to India, but they were saying that there were some documents which were related to the case and some which were not related to the case, and that the judges were sorting it out.

SHRIMATI JAYANTHI NATARAJAN: This is totally irrelevant to the Bill we are discussing, Madam. How can it, possibly, be connected? How can it be related to this Bill? (*Interruptions*)

SHRI JOHN F. FERNANDES: He is in the Government now. Mr. Dasgupta, you ask from your Government. (*Interruptions*)

SHRI GURUDAS DAS GUPTA: Madam, can I make a submission, with your kind permission? Madam, the issue

is: we are discussing the implementation of a law concerning economic offences violation of foreign exchange regulations also is a part of economic offences.

SHRIMATI JAYANTHI NATARAJAN: There is a difference between the two.

SHRI GURUDAS DAS GUPTA: Let me make my submission. You may not agree. The point is: when we are discussing the question of foreign exchange regulations, hon. Members are free to give illustrations. As a matter of illustration...

SHRIMATI JAYANTHI NATARAJAN: What illustration? We can also give illustrations.

SHRI GURUDAS DAS GUPTA: As a matter of illustration, if some hon. Member refers to certain things that have happened in the past, wherein the Government had not acted properly, and if some hon. Member wants an assurance from the Government that after the passing of this Bill, the Government would not act in an indecisive way, but in a decisive way, I believe, Madam, it is part and parcel of the concern of the Members for the proper implementation of the law; it cannot be considered irrelevant.

SHRIMATI JAYANTHI NATARAJAN: Madam, this is a different Bill. That is the only point we are making.

DR. BIPLAB DASGUPTA: I want your ruling on this, Madam.

THE DEPUTY CHAIRMAN: I do not have to give my ruling on everything.

DR. BIPLAB DASGUPTA: Would you allow me to speak now, Madam?

THE DEPUTY CHAIRMAN: You speak on the Bill.

DR. BIPLAB DASGUPTA: I am speaking on the Bill, Madam; not outside the Bill. I am speaking on the Bill. Let them not interrupt me. (*Interruptions*)

SHRI VAYALAR RAVI: Madam, kindly see the title of the Bill — The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Bill.

DR. BIPLAB DASGUPTA: Madam, there was a promise that within six months, all the papers would be made available to us. Then we came to know as to why the information was not coming. We were told that some of the information was not relevant to the case and some was relevant, and so the Judges were sifting through the material to decide which was relevant and which was not relevant. Later on we came to know that some of the parties involved, including one major industrialist located in the United Kingdom, were trying their best to close it on the ground that in India laws relating to human rights do not function... ..(*Interruptions*).. ...and so, if this information comes and if the accused are put before the Indian court, then they will not get justice. That was the point which was given. Madam, I would like to know from the Government what has happened to the whole issue. We would like to know the uptodate information on this issue and when they are going to get the names and the information relevant to it. It is an economic crime, a serious crime, everybody is concerned about it — may not be the Congress Members — but we are very much interested in this. I would like to know from the Government what they are going to do about this.

Another point that I would like to raise is this: There has been some discussion about gold smuggling. Even this law has something to do with gold smuggling. There has been a legislation earlier, when Dr. Manmohan Singh was there, under which they were permitting one person to bring five kg. of gold into the country from outside. Now they are saying this is not functioning properly and this permission to bring five kg. of gold has not stopped gold smuggling into the

country. The reason is very simple. Every day, from Dubai and other Gulf countries, hundreds of small boats come — one of our friends has mentioned this point — and through these small boats gold reaches our shores, partly because of the differences in the demand structure in the world. There is more demand for gold in our country than in other countries of the world—I can't say whther it is an irrational demand or a rational demand. But the point is, this divergence between demand and supply within the country has led to smuggling of gold in a big way. One of the ways by which it can be stopped is through popular education about gold. Another way could be by really improving our border vigilance arrangements. Until now the border vigilance arrangements have been very, very poor. Those who are smuggling gold to our shores are much better armed than our own police force, patrol boats and so on. So, something must be done to ensure that our border vigilance is strengthened.

I would like to make another point. There have been some attempts at giving amnesty. In one of the Budgets, there was a provision that if somebody brought black money from outside the country, then, for a certain number of months or years, no questions would be asked and the persons involved in this would not be subjected to any laws and so on. That was the way it was stated. What has happened because of this? Black money from our country is transferred through the hawala market to the West and, after paying a premium, that money has come back to our country as white money. Of course, a certain amount of addition to our foreign exchange reserves has been achieved; maybe, two or three billion dollars have come through the amnesty scheme. What it amounts to is, simply, smuggling black money out of the country, laundering it—turning it into white money—and then bringing it back into the country. What I am saying is, there is a whole range of economic crimes. I can see a lot of uneasiness in the Congress benches when we talk about economic crimes. ...*(Interruptions)*...

SHRI PRANAB MUKHERJEE: This is not fair. He cannot accuese the Congress Party. If you yield for a minute, may I know from you whether it is. ...*(Interruptions)*... Please. You were talking about implementation. Is it not a fact that since 1977, the Left Front Government in West Bengal—it is on record—...*(Interruptions)*...

THE DEPUTY CHAIRMAN: I have allowed him. ...*(Interruptions)*... I have permitted him.

SHRI PRANAB MUKHERJEE: ...said that is would not implement COFEPOSA and ESMA as it involves preventive detention? Is it not a fact? You are talking of implementation!

DR. BIPLAB DASGUPTA: What?

SHRI PRANAB MUKHERJEE: Is it not a fact that the West Bengal Government is on record that it will not implement COFEPOSA and ESMA because it involves preventive detention? I would like to be corrected. ...*(Interruptions)*...

DR. BIPLAB DASGUPTA: You should realize. ...*(Interruptions)*...

SHRI PRANAB MUKHERJEE: You are talking of implementation. I am asking, who is going to implement it? ...*(Interruptions)*... Don't try to accuse Congressmen of corruption. What are you talking about?

SHRI SURINDER KUMAR SINGLA: It is only the Marxists who have not implemented it. ...*(Interruptions)*...

SHRI PRANAB MUKHERJEE: How can he say that Congressmen are economic offenders? How dare he say that? ...*(Interruptions)*... You are raising your accusing finger. ...*(Interruptions)*...

SHRI NILOTPAL BASU (West Bengal): Don't say all these things. ...*(Interruptions)*...

SHRI PRANAB MUKHERJEE: How can he say that Congressmen are economic offenders? How can he make that allegation? Who is he to make that allegation against Congress Members? ...*(Interruptions)*...

SHRI GURUDAS DAS GUPTA: Madam, I suggest that there is nobody in the House to quetion the credibility of any Member. The question is that we are discussing a controversy. ...*(Interruptions)*...

SHRI PRANAB MUKHERJEE: Why are you bringing in Congress Members? Who are you to bring in Congress? ...*(Interruptions)*...

THE DEPUTY CHAIRMAN: Please sit down. ...*(Interruptions)*...

SHRI GURUDAS DAS GUPTA: It is unfair. ...*(Interruptions)*...

THE DEPUTY CHAIRMAN: Please sit down. Dr. Biplab Dasgupta, please sit down. ...*(Interruptions)*...

SHRI PRANAB MUKHERJEE: Congress Members are not concerned. Only you people are concerned. ...*(Interruptions)*...

THE DEPUTY CHAIRMAN: Take your seats. Dr. Biplab Dasgupta, in your speach, as I heard it, you said, "I find that the Congress Members are uncomfortable." I do not find any discomfort.

SHRI PRANAB MUKHERJEE: Why should he say that? ...*(Interruptions)*...

THE DEPUTY CHAIRMAN: Dr. Biplab Dasgupta, the accusation started from your side. ...*(Interruptions)*...

SHRI PRANAB MUKHERJEE: He is uncomfortable. ...*(Interruptions)*...

SHRI GURUDAS DAS GUPTA: Madam, it ends there. As you said, it ends there.

THE DEPUTY CHAIRMAN: No, it does not end there. ...*(Interruptions)*... Mr. Gurudas Das Gupta, just one minute. ...*(Interruptions)*...

SHRI SURINDER KUMAR SINGLA: How can he say that all the Congress Members are uncomfortable?... *(Interruptions)*...

SHRI PRANAB MUKHERJEE: Everyday he is taking liberty. The other day he told a Member, "You are a fool." ...*(Interruptions)*...

SHRI GURUDAS DAS GUPTA: After that, the Deputy Chairman has said that it is over. ...*(Interruptions)*...

SHRI PRANAB MUKHERJEE: Let it be expunged. ...*(Interruptions)*...

THE DEPUTY CHAIRMAN: Please sit down.

I was cautioning the Member to restrain himself and to speak on the subject. This is what happens when you go beyond the subject, and this is how you accuse. This is not a political battle going on here. Dr. Biplab Dasgupta, this is a Bill which the hon. Minister has brought over here to discuss about the COFEPOSA Act or to discuss about foreign exchange violations. I heard a couple of speeches before you. They did not generate this kind of hatred among Members and exchange of such words. They made some contributions. If you have some contributions to make, please do so, but you cannot accuse the Members like this. If you do so, then, you will be accused.

So, I am going to expunge all that from the record. He said that the Congressmen are uncomfortable. I didn't find any discomfort either in the Congress Members or in you or in anybody else.... *(Interruptions)*

I didn't find anybody uncomfortable in this House.

SHRI MD. SALIM (West Bengal): Why not?.....*(Interruptions)*

THE DEPUTY CHAIRMAN: I didn't find anybody uncomfortable in this House.

Dr. Biplab Dasgupta, please make your point on the Bill, on the subject. Don't go beyond that.

SHRI P. CHIDAMBARAM: May I appeal to hon. Members? This is a very short Bill on a very small point. If Members keep their speeches short, there will be no scope of controversy.

THE DEPUTY CHAIRMAN: Other Members also made contributions. There were Members from the B.J.P., from this side and from the other side. Everybody spoke for four or five minutes and it was all right. Now, you speak on the legislation, which we have to enact today and don't speak on anything beyond that.

DR. BIPLAB DASGUPTA: Madam, I spoke only on the legislation.

THE DEPUTY CHAIRMAN: No, you did not.

DR. BIPLAB DASGUPTA: I am strictly speaking in accordance with the title here, about conservation of foreign exchange and nothing else.

THE DEPUTY CHAIRMAN: But, would you please explain to me why you had to say that the Congress Members or any other Members are uncomfortable? (*Interruptions*) So, you speak only on your subject.

SHKIMATI JAYANTHI NATARAJAN: He was referring to Bofors and other things. He should confine himself to the subject.

DR. BIPLAB DASGUPTA: That is your opinion, not my opinion. Bofors remains very relevant to the whole question of foreign exchange. We cannot discuss foreign exchange without discussing kickbacks. How can this be discussed without discussing the issue of economic crimes, the issue of foreign exchange? I do not understand this. In any case, the last point I am going to make is this. (*Interruptions*) Madam, when I say they are uncomfortable, am I wrong in this? Look at their reaction.

THE DEPUTY CHAIRMAN: I think, I am uncomfortable now, because you are not following the direction of the Chair.

DR. BIPLAB DASGUPTA: I am finishing. The last point I am going to make is this. It is for our new Finance Minister to consider. One reason why there is so much of smuggling is that there is a divergence between unofficial and official prices and also because of this whole question of import control. That is true. But the solution, which is sometimes put forward in the form of full convertibility of the Rupee, which would, in a sense, bridge the gap between the unofficial and official prices and that would deal with Havala and all that, may or may not be realistic. I say this because in most countries even such things happened in spite of there being full convertibility. It is because global foreign exchange dealers start speculations. It happened with the Rupee in October and November. At that time the speculation went aginst the Rupee and it forced the Indian Government to buy the Rupee from the world market, because the Rupee was not sufficiently strong, because there was some speculation by dealers in foreign exchange. So, this may not be a solution. Although the former Finance Minister had been talking of it for a long time, I would rather expect Mr. Chidambaram not to jump into it without considering the possible consequences, ramifications and implications of this particular action. This is also related to the whole question of import control. Obviously one of the reasons behind smuggling is import control but that does not mean that import control should be abolished, because this liberalisation has also led to severe economic cost in terms of increasing propensity to consume, in terms of various problems of deficit, which we have been facing. One of the things that I found missing in the Finance Minister's speech, when he spoke, was the whole range of issues, which are related to foreign trade. I am not going to raise it now, because we will discuss about it in detail when we discuss the Budget. But the main point that I am making, as I made at the very beginning,

is not so much about the law, which is going to be legislated, but the question whether we are going to implement it or not. Our record of the last so many decades has been very, very poor. There has been such a divergence between rhetoric and reality that unless that is bridged, this kind of passing of a law alone would not carry any conviction. Thank you very much.

SHRI R.K. KUMAR (Tamil Nadu): Madam Deputy Chairman, I fully support this Bill. But, through you, I would like to draw the attention of the hon. Minister to only one aspect of the implementation of the law. This law is meant for habitual offenders and regular racketeers. But, down the line, even the smallest of the small officials, where there are genunie valuation differences in import, where there is genuine, inadvertent violation of rules, this is being used as a threat to extract confessions and admissions. I would be very grateful if the hon. Finance Minister issues instructions down the line not to misuse this law to threaten and extract coerced confession and levy penalties and fines through the threat of COFEPOSA. With these observations, I support the Bill.

SHRIMATI RENUKA CHOWDHURY (Andhra Pradesh): Madam Deputy Chairman, I rise to support this Bill and I have a very small suggestion to make. My heart does not support this Bill. This is a technical support which we have to extend because this kind of legislations do not address themselves to the reality of the problem and as some of my hon. colleagues have pointed out, by doing so we are further empowering officials down the line to misuse this law and it removes the focus from having committed the crime to preventive measure. Now, if you are going to use this as a preventive check, then we have a dismal record of what we have already seen. I do not know how far it is going to be effective. However, we have to do with the mathematics of survival on such matters and we have to address ourselves to such matters in Parliament. One of my hon. colleagues said that once the rupee becomes convertible, this piece of legislation is going to be redundant. So, perhaps it is like that we just pass this Bill and be content with it because it is going to be done away with within a very short time as soon as the rupee becomes fully convertible. We embrace the liberalisation line that we have been talking about and do nothing about it. I hope the hon. Minister appreciates that I made a very short speech and his reply will also be equally short. Thank you.

SHRI GURUDAS DAS GUPTA: Madam, we have been always told, the more the liberalisation, the less the crime, the more the liberalisation, the more the transparency and the more the liberalisation, the more the laws will be applied in this sphere. That is what was the promise given by the earlier Governments. As we look into the operation of the economic offenders, we are inclined to believe that despite the rigorousness of law and despite the successive amendments that the Government have brought about, the economic crimes in the country are on the rise. Let the House join me in expressing the concern that despite liberalisation, despite the rigorousness of law, despite the so-called decisiveness of the Government, so far as the implementation of law is concerned, there has been no let up. Let us agree on this point that the economic crimes are on the rise. Therefore, instead of making a long speech, at the outset, may I request the hon. Minster, Mr. P. Chidambaram, to dispel the apprehension that the Government is not serious about the economic crimes that are taking place at random in the country? I do not want to go into details and illustrations. It is all well known. Let him say that the Government will not take the economic offences in the way it was being done earlier. I do not hold anybody guilty. Let the country know whether the economic crimes are on the rise or not. Therefore,

I would like to know whether the white-collar crimes or criminals, who had blasted a bomb in one of the cities of India, are going to be treated differently than the economic offenders or whether the economic offences will be taken care of by the Government as seriously as any other offence. Let the hon. Minister dispel that apprehension. That is the basic issue before the country because there is a suspicion and there are reasons for this suspicion that the Governments have been lacking the political decisiveness to bring to book the economic offenders. In turn, they are being patronised by the political leaders. Wherever the political leaders go, the economic crimes are being patronised by them and by the people in high places and political strings are always there. Therefore, the Government have always gone soft on them. There is a total unanimity on that among the people whether we accept this reality or not. There is a general unanimity on this all over the country. Let the hon. Minister dispel that apprehension. Madam, the question is, despite the rigorousness of the law, smuggling is on the rise. Smuggling is on the rise all over the country. Whatever may be the form of smuggling, whether a Minister is responsible, whether a politician is responsible or whether a trade union leader is responsible, whatever be the shape or form of smuggling, smuggling is on the rise and there is a definite attempt by the people in high position, whether a Minister or a Member of Parliament, whether in Delhi or in Calcutta or in Mumbai, to bypass the law. There is always an attempt to bypass the law and this is being done by misusing the position. Madam, one thing is clear—the Left Front Government in West Bengal never considered the Preventive Detention Act as an answer to a crime; we did not believe in that. This is the political position, and because of the political position, we have always stated that we shall never apply the Preventive Detention Act even for taking care of a smuggler or a person who murders a man. This is the political position, whether you agree to it or not; and, Madam, we shall scrupulously continue to stick to this position, whatever may be the criticism from the hon. Members of the House or from a section of the House. Madam, the entry of gold was liberalised. What was the statement of the previous Finance Minister? The statement was: "If the entry of gold is liberalised, the price of gold will come down, there will be less smuggling and the country will benefit." Has the country benefited?

Has the country benefited from this? Is'nt it true that despite all the liberalisation, despite the entry of gold through the legalised channel, the price of gold is as exorbitant in India as before and smuggling of gold is taking place throughout and the Government has miserably failed? Madam, there are a number of instances showing that an industrial house has been violating the FERA regulations with impunity and no action is being taken! Madam, you may kindly permit me to raise an issue relating to the violation of foreign exchange regulations, among other crimes, being committed recently by the Reliance industry in the country. It is all well known that one of the crimes committed by the Reliance industry is violation of the FERA regulations; that industrial house had enjoyed the political patronage over the decades, over the years. After the report of the Income-tax Department has come out, after the SEBI has held them guilty, now the Reliance industry has approached the Ministry of Finance—I hope the hon. Minister listens to me—and also the different Departments for compounding the cases. What does it mean? If the cases ar compounded, does the criminality become a little less? And there is always a suspicion that in order to get out of it, that is being taken recourse to. I would like to know whether the Government agrees to that. One of the charges against them is the violation of the foreign exchange

regulations. Madam, we had suggested hard that there should be an exemplary punishment. There has not been an exemplary punishment. We would like to know from the hon. Minister what his reaction is to the persistent demand that is being made on the floor of the House that there should be an inter-disciplinary committee to look into the various crimes committed by the Reliance industry which happen to be the number one industrial house in the country. What is the Government's attitude towards the persistent demand that there should be an inter-disciplinary committee? All these issues have been raised, Madam,—to ascertain whether the Government is serious. Parliament is generous in passing the Bill, but the Government must be decisive in implementing the Act; that is where the gap has always been tormenting the legislators and the general public; that is where the Government must show that it is ready to break a new ground. We would like to know whether hon. Mr. Chidambaram would walk on the dotted line or whether he is going to take a different course of action and is going to be harsh and harsh on those who are found to violate the laws to the great detriment of the national interests. Thank you, Madam.

SHRI ADHIK SHIRODKAR (Maharashtra): Madam Deputy Chairman, I wish to express a very limited reservation and apprehension, as far as the period of three months being increased to six months for Advisory Board is concerned. As is known, any person who is sought to be detained, at the time of his detention, is served with all the papers on the basis of which the subjective satisfaction of the detaining authority is arrived at. These are also the papers which go before the Advisory Committee consisting of judges. Therefore, if the period of three months—is increased to six months—basically I see no justification—then it has two ramifications. Number one; a person who is detained waits for a period of three months an awaits the decision of the Advisory Committee and if it goes against him, then only he moves the High Court by way of a writ petition. Therefore, if the period is increased, a person who normally waits for three months will be reluctant to wait for a period of six months and the courts would be flooded with writ petitions. That is an offshoot of this. Number two; assuming that after six months, if the Advisory Board sets aside the detention this provision can be misused or abused by the detaining authorities because the person at any rate remains in detention for a period of six months. This is precisely the provision of TADA where a person could be detained for six months without filing of the chargesheet. Earlier it was one year and then it was brought down to six months. This led to the abuse of TADA and criticism of TADA. Therefore, I earnestly appeal that in order to avoid this misuse and in order to avoid the possible flooding of writ petitions in the various courts kindly delete the provision of enhansing the period of three months to six months because three months are adequate. Thank you, Madam.

SHRI P. CHIDAMBARAM: Madam, I am deeply grateful to the hon. Members for the broad support extended to this amending Bill which seeks to extend the period of this provision by another three years. Madam, this law is a law of preventive detention. If anyone has philosophical objections to preventive detention or conscious objections to preventive detention, I cannot convert him. But, then to that extent that State Government will not enforce this law, and, therefore, it is rather unfair to say the enforcement of this law by the Central Government or the other State Governments is not satisfactory. I think those who ask for enforcing this law of preventive detention are for being effectively implemented by the Central Government, should also cooperate in enforcing the same law in the States. As I

said, I am not getting into the philosophical arguments. This law was passed at a time when India's economy was a fairly closed economy. I have with me, for example, goods which are more often smuggled—gold, silver, electronic goods, Indian currency and foreign currency. There is another category of violations; abuse of export incentives, like the advance licence. And there is illegal dealing in foreign exchange by compensatory payments, etc. Take for example, gold. The demand for gold in this country is estimated to be about four hundred and fifty tonnes a year. If you do not allow gold, this demand will have to be satisfied in some other manner and smuggling, therefore, is inevitable. However effective a Government may be, people will find ingenious ways to smuggle gold. When control over imported gold was relaxed in the case of NRIs returning to India and through the special import licence route, about 200 to 220 tonnes of gold come through the legitimate route—and to that extent smuggling has come down. I look forward to the day and I have no hesitation saying this, when our economy will be strong and we can, like most countries in the world, allow free import of gold. But that day is farther down the road. As a result of lifting restrictions on taking foreign exchange out of the country for education for medical expenses, for business purposes, even for travel, I think the evil of compensatory payments has diminished considerably. I am not saying that the rupee will become fully convertible on the capital accout tomorrow or the next year. But somewhere down the road, the rupee will indeed become convertible on the capital account and that day you will find most of these economic crimes curbed. Why do we still have abuse of export incentives? We have it because we still have restrictions. We still have quantitative restrictions. If we did not have quantitative restrictions, nobody would resort to advance licences or abuse of advance licences. Yes, in the transitional phase, we cannot lift these restrictions overnight. We will have to move to tariffs over a period of time. During that transitional phase, we have to be vigilant. We will have to put up with some abuse of licences also. It is nobody's case that we should not come down hard on economic offenders. Let me assure the hon. Member who put this specific question to me that if an offender or an offence comes to me for a decision, the offender will not escape. He will not escape. I will take stringent and the strictest action possible against any offender or any offence which is brought to my notice. We have taken action in the last two months. We have taken action against individuals and against companies. We will have no hesitation in taking any action. If there are legal avenues for redress before tribunals or courts, then that is not an area where the executive will interfere. It is for tribunals and courts to deal with the matter according to law. The executive is not going to interfere in an area where the jurisdiction is under the court. The law made by this Parliament has vested court with the jurisdiction to decide these matters. In respect of a category of detention orders, we need more time. I am responding to my good friend, Mr. Shirodkar. In the category of detention orders where detention orders are made in respect of smuggling activities in highly vulnerable areas, we are taking a little more time to come before the Advisory Board and we are preparing a longer period of detention. Why do we take more time? Mr. Shirodkar is aware of the fact that many of these detention orders are struck down on grounds which may appear to a citizen to be trifling but which in law are grounds which the courts have held as good grounds. Even if an illegible copy is furnished, if some document is not given to the detenue, if a proper translation is not given to him, if there is even a short delay in disposing of a representation made on his behalf by his wife, the detention order is likely to be set aside. In fact, in this Bill, unlike in the next Bill that you will consider, the number of orders which are struck down are quite

high. Therefore, it is all the more important that we take absolute care, meticulous care, before we prepare our case and go to the Advisory Board in case of detention orders in respect of smuggling or smugglers in highly vulnerable areas. That is why we take a little more time to approach the Advisory Board. The hearing will be perhaps be more, the length of the hearing will be greater and the number of hearings will be greater in cases involving highly vulnerable areas. We have asked for an extension of time from three months to six months. Where the Advisory Board confirms the order, the period of detention would not be one year, but two years. I think this is a perfectly justified provision because we are facing a very serious challenge from economic offenders. I think we need this law on the statute book.

Madan, let me recall that when Mr. Pranab Mukherjee piloted this Bill, there was no Emergency in this country. This Bill was passed in pre-Emergency days. But I also recall that as a young political worker, I was full of admiration for the very stringent manner in which this law was enforced in 1975 and 1976. I am not pleading for Emergency. But the point remains that these laws can be enforced only if the political and social climate is supportive for enforcing these laws. There was no support for TADA; TADA had to go. There is no popular support today for preventive detention, as you can see from the hon. Members' speeches — I don't support preventive detention. But what is it that we do? Punitive laws require a long litigation. This litigation travels from the lowest court to the Supreme Court and it takes 15 years. And in those 15 years, most people will come out on bail or will stay out by various other means. Therefore, a preventive law is necessary at this point of time. But how strongly we enforce it does not depend upon the will or the determination of a Finance Minister. It depends upon whether there is broad social and political support for enforcing such a law. When such laws are enforced, it is not a matter of surprise that...*(Interruptions)*

SHRI GURUDAS DAS GUPTA: Kindly yield for a minute. This support had never been wanting...

SHRI P. CHIDAMBARAM: But it was wanting in West Bengal. You were not willing to enforce it.

SHRI GURUDAS DAS GUPTA: Madam, there is not a single Finance Minister in the country who ever complained that he did not get support, because we wanted to be hard on the offenders. That is not the point.

SHRI P. CHIDAMBARAM: We are not talking about punitive laws. There is support for enforcing punitive laws against smugglers. Is there support for enforcing preventive detention laws against smugglers? You confessed a few minutes ago that it is your philosophy that a preventive detention law should not be applied which means that there is no support amongst a section, and I accept it. I accept your faith as a genuine faith. But the point is when preventive detention laws are invoked and people are detained, I will not be surprised — I am not attributing any motives — if there are a large number of people who will come and make representations. Very distinguished persons make representations that these people should not be put under preventive detention laws. Therefore, I am saying what is important are two things. I think that the point has been made; this law should not be applied against petty offenders, couriers and small fries who are part of a big chain. When it is used against big people, you will find a wave of representations in favour of such people saying that they are being falsely implicated, that they are being falsely detained and that we should help them. All I am saying is that there is no broad support for enforcing preventive detention laws. I am not surprised because these laws are harsh laws. You are detaining a man without trial, without charges, without an inquiry. You are detaining him for as long as one year... *(Interruptions)*

SHRI MD. SALIM: If the Minister yields for a minute, I would just want to ask one thing. I am appreciating the way the Minister is replying. It is true that the real climate should be there to use such laws. Then, in the course of his speech, he mentioned that when the preventive detention law is applied against economic offenders, distinguished people come and make representations. This House should be taken into confidence and be informed who these people are who, in the last six to ten years, made representations to the Finance Minister that if they took action against economic offenders under the prevention detention law... *(Interruptions)*

SHRI GURUDAS DAS GUPTA: That is what I have been harping on...

THE DEPUTY CHAIRMAN: Let him answer...

SHRI GURUDAS DAS GUPTA: I have been saying 'political connections and political patrons'. This only strengthens my point.

SHRI P. CHIDAMBARAM: It is not my propose to point a finger at anyone. All that I am trying to say is, please let us understand that a preventive detention law can be enforced only when there is broad social and political support for such an enforcement. It does not depend upon the whim of a Finance Minister or the will of a Finance Minister. There must be a broad support. And we must always be careful to see that the law does not fall on the small fry, the cog in that machine. The law must reach the person who is the kingpin behind the smuggling activities. We are striving towards that. We have a significant measure of success. There is significant success in the application of this law. But please remember, there is an Advisory Board and there is a court. Many detention orders will be struck down even if there is a small mistake. All I am saying is, please give us support; we will enforce this law.

I will be as strict as I can be. We will try to curb smuggling. But in the long run, the answer to smuggling is not a preventive detention law. The answer to smuggling is to change the economic regime of the country where smuggling is not necessary and people can freely trade in goods, products and commodities.

But there will always be a set of goods such as arms, drugs, explosives, RDX, etc., which will be smuggled and we have to be extremely strict on that. The next Bill that this House will consider deals with narcotics and psychotropic substances. There I will show no mercy. I will show no mercy at all. The law is a very strict law. The punitive law is also a very strict law. Only yesterday, someone was sentenced to 15 years' imprisonment. When we talk of smuggling of goods which are otherwise legitimate goods it is because our economic stituation does not allow us to import those good. There is another set of goods which are extra-commercial such as drugs, arms, explosives. These are extra-commercial goods and we should show no sympathy at all. There we are not going to relax anything. I would still appeal to everybody to give us the social and political support to enforce a preventive detetion law.

Thank you, Madam.

THE DEPUTY CHAIRMAN: The question is:

> "That the Bill further to amend the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, as passed by Lok Sabha, be taken into consideration."

The motion was adopted.

THE DEPUTY CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill.

Clause 2 was added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill

SHRI P. CHIDAMBARAM: Madam, I move:

"That the Bill be passed."

The question was put and the motion was adopted.

The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1996

THE MINISTER OF FINANCE (SHRI P. CHIDAMBARAM): Madam Deputy Chairman, I move:

> "That the Bill further to amend the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, as passed by Lok Sabha, be taken into consideration."

Madam, in recent years India has been facing a serious problem of illicit traffic in narcotic drugs and psychotropic substances. Being sandwitched between two major sources of narcotic drugs i.e., the Golden Crescent (Pakistan, Afghanistan and Iran) on the one side and the Golden Triangle (Myanmar, Thailand and Laos) on the other, India is highly vulnerable to transit traffic. Even though a number of legislative, administrative and preventive measures have been taken in the past such as the deterrent penal provisions in the NDPS Act, 1985 and the provisions for preventive detention under the PITNDPS Act, 1988, illicit traffic in narcotic drugs and psychotropic substances continues to be a serious threat.

The PITNDPS Act provides for two types of cases in which persons engaged in organised drug trafficking can be detained. The first relates to orders of detention issued under section 3(1) of the Act wherein the maximum period of detention is one year. After a person is detained, the case is referred within 35 days to an Advisory Board consisting of three High Court Judges for its opinion. If the Advisory Board recommends that the detention is not justified, the detenu is released forthwith. In other cases, the detention orders are confirmed within 90 days.

The second type of cases relates to persons who deal in drug trafficking in areas categorised as highly vulnerable under section 10 of the Act. These areas include the international airports, seaports, international borders with other countries, coastal areas, etc. If the Competent Authority issues a declaration under section 10 of the Act to the effect that a person has engaged in illicit trafficking in a highly vulnerable area, the maximum period of detention is increased from one year to two years, as per section 11 of the act. In such cases, the opinion of the Advisory Board is required to be obtained within six months of detention, instead of the usual period of three months.

Past experience shows that the provisions of section 10 of the Act have been a strong deterrent to drug traffickers. I may say, Madam, that unlike the other Act, the success ratio of the detention orders under this Act has been extremely high and almost 75—90% of the detention orders issued under this Act have been upheld by the Tribunals or the courts, as the case may be.

It is, therefore, necessary to continue the provisions of section 10 of the Act in respect of detention orders which may be issued even after 31st July, 1996.

Madam, this Bill is virtually a mirror of the other Bill. We have discussed the other Bill at great length. I would be grateful if hon. Members can pass this Bill without discussion.

The question was proposed.

SHRI GURUDAS DAS GUPTA (West Bengal): Madam, we can pass it without discussion. *(Interruptions)*.

THE DEPUTY CHAIRMAN: I have other names. Let me ask the other people. I have got Mr. Kohli's name. If he does not want to speak ...*(Interruptions)*